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Attorneys for Plaintiff American Landscaping Company

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the use  
and benefit of AMERICAN LANDSCAPING  
COMPANY,

Plaintiff,

vs.

KIEWIT BUILDING GROUP INC. and  
TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,

Defendants.

Case No. \_\_\_\_\_

**COMPLAINT**

Use Plaintiff American Landscaping Company (“ALC”), by and through its counsel of record, the Law Offices of Royce & Brain, for its Complaint against Defendants Kiewit Building Group Inc. (“Kiewit”) and Travelers Casualty and Surety Company of America (“Travelers”), hereby states and alleges as follows:

## **JURISDICTION & VENUE**

1. ALC is, and at all relevant times was, a corporation organized and existing under the laws of the State of Alaska with its principal office in Anchorage. ALC is in good standing with the State of Alaska and is in all ways qualified to bring and maintain this action.

2. Kiewit is a Delaware corporation doing business within the State of Alaska, with offices in Anchorage.

3. Travelers is a Connecticut corporation authorized to transact surety business in the State of Alaska.

4. Travelers issued Payment Bond No. 041-SB-105385880 to Kiewit, in its capacity as general contractor on the federal construction project known as “Design/Construct Barracks (FTW3366B) Aviation Task Force – Phase I, Fort Wainwright, Alaska” (hereafter “Project”).

5. This action arises under, and the Court has jurisdiction pursuant to, 40 U.S.C. §3133 *et seq.* (“Miller Act”).

6. Venue is proper as all work on the Project was performed within the District of Alaska, ALC and Kiewit maintain offices here and Travelers issued its bond here.

## **FACTS**

7. ALC realleges and incorporates by reference the above paragraphs and further states and alleges as follows:

Complaint

*American Landscaping Co. v. Kiewit Building Group, Inc. et al.*

Case No. \_\_\_\_\_

Page 2 of 5

8. ALC entered into a written subcontract agreement (“Subcontract”) with Kiewit to furnish and install landscaping materials on the Project, pursuant to a Project design prepared by Kiewit.

9. Pursuant to the Subcontract, ALC furnished and installed all materials required to complete the landscaping that was specified in Kiewit’s Project design.

10. During the course of the Project, Kiewit substantially increased the dimensions of the areas on the Project depicted on the Project design drawings to be landscaped.

11. At the direction of Kiewit, ALC furnished and installed additional landscaping materials to the Project beyond the scope of work that was provided for in the Subcontract.

12. ALC advised Kiewit that such additional work was beyond the scope that was provided for in the Subcontract.

13. Kiewit provided ALC with assurances that it would receive payment for the additional landscaping materials it was directed to furnish and install on the Project.

14. Despite demand being made, Kiewit has failed and/or refused to pay ALC, in full, for the additional work Kiewit directed ALC to perform on the Project.

15. More than ninety (90) days but less than one (1) year has elapsed from the date on which ALC last furnished any labor, materials, services or equipment to the Project.

### **COUNT I – CLAIM ON CONTRACT**

16. ALC realleges and incorporates by reference the above paragraphs and further states and alleges as follows:

17. ALC performed all obligations required of it under the Subcontract, including the performance of additional work on the Project directed by Kiewit.

18. Kiewit owes ALC for all additional work performed on the Project, in the approximate sum of \$450,000, the exact amount to be proven at trial.

### **COUNT II – QUANTUM MERUIT**

19. ALC realleges and incorporates by reference the above paragraphs and further states and alleges as follows:

20. ALC is entitled to receive the reasonable value of all labor, materials, services and equipment it furnished to the Project under Kiewit's direction.

21. The reasonable value of the labor, materials, services and equipment furnished by ALC to Kiewit for use on the Project that remains due and owing totals approximately \$450,000, the exact amount to be proven at trial.

### **COUNT III – CLAIM ON PAYMENT BOND**

22. ALC realleges and incorporates by reference the above paragraphs and further states and alleges as follows:

23. Travelers issued Payment Bond No. 041-SB-105385880 to Kiewit pursuant to the Miller Act, for the benefit of all persons/entities supplying labor, materials, services and/or equipment to the Project.

24. Travelers is liable to ALC for payment of all amounts that remain due and owing on the Project, in the approximate sum of \$450,000, the exact amount to be proven at trial.

**PRAYER FOR RELIEF**

WHEREFORE, ALC prays for the following relief:

A. For a final judgment in the approximate principal amount of \$450,000, the exact amount to be proven at trial, jointly and severally, against Kiewit and Travelers.

B. For an award of pre- and post-judgment interest at the highest rate allowed by law.

C. For an award of costs and attorney's fees necessarily incurred by ALC in having to bring and maintain this action.

D. For such other and further relief as the Court deems just and equitable.

LAW OFFICES OF ROYCE & BRAIN  
Attorneys for Plaintiff

Dated: May 13, 2013

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